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In the Supreme Court of the United States

OCTOBER TERM, 1992

AMERICAN DREDGING COMPANY, PETITIONER

v.

WILLIAM ROBERT MILLER

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

Whether admiralty cases filed in state court under the Jones Act, 46 U.S.C. App. 688, and the "saving to suitors" clause, 28 U.S.C. 1333(1), are governed by the state or federal law of *forum non conveniens*.

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This brief is submitted in response to the Court's order inviting the Solicitor General to express the views of the United States.

STATUTORY PROVISIONS INVOLVED

28 U.S.C. 1333 provides in pertinent part as follows:

> The district courts shall have original jurisdiction, exclusive of the courts of the States, of:
>
> (1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.

The Jones Act, 46 U.S.C. App. 688, provides in pertinent part as follows:

> **(a) Application of railway employee statutes; jurisdiction**
>
> Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the

United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply.

La. Code Civ. Proc. Ann. art. 123 (West Supp. 1992) provides:

> A. For the convenience of the parties and the witnesses, in the interest of justice, a district court upon contradictory motion, or upon the court's own motion after contradictory hearing, may transfer a civil case to another district court where it might have been brought; however, no suit brought in the parish in which the plaintiff is domiciled, and in a court which is otherwise a court of competent jurisdiction and proper venue, shall be transferred to any other court pursuant to this Article.
>
> B. Except as provided in Paragraph C, upon the contradictory motion of any defendant in a civil case filed in a district court of this state in which a claim or cause of action is predicated solely upon a federal statute and is based upon acts or omissions originating outside of this state, when it is shown that there exists a more appropriate forum outside of this state, taking into account the location where the acts giving rise to the action occurred, the convenience of the parties and witnesses, and the interest of justice, the court may dismiss the suit without prejudice; however, no suit in which the plaintiff is domiciled in this state, and which is brought in a court which is otherwise a court of competent jurisdiction and proper venue, shall be dismissed pursuant to this Article. In the interest of justice, and before the rendition of the judgment of dismissal, the court shall require the defendant or defendants to file with the court a waiver of any defense based upon prescription, provided that a suit on the same cause of action is commenced in a court of competent jurisdiction within sixty days from the rendition of the judgment of dismissal.
>
> C. The provisions of Paragraph B shall not apply to claims brought pursuant to 46 [U.S.C. App.] § 688 or federal maritime law.

STATEMENT

1. Respondent, a Mississippi resident, moved to Pennsylvania to seek employment in 1987. Petitioner, a Pennsylvania corporation with its principal place of business in New Jersey, hired respondent to work on the M/V John R, a tug operating on the Delaware River. Respondent was injured in the course of that employment on the Delaware River. He was subsequently treated for his injuries in Pennsylvania, New York, and Mississippi. Pet. App. A10.

2. On December 1, 1989, respondent filed this action in the Civil District Court for the Parish of Orleans, Louisiana, seeking relief under general maritime law and the Jones Act, 46 U.S.C. App. 688.[1] Petitioner moved to dismiss the suit for lack of personal jurisdiction and under the doctrine of *forum non conveniens*. The state trial court rejected petitioner's challenge to personal jurisdiction because petitioner had appointed an agent for service of process in Louisiana.[2] Petitioner's motion to dismiss the complaint under the doctrine of *forum non conveniens* was granted, however.

Dismissal of the complaint was predicated on the trial court's finding, not challenged here, that Louisiana "ha[d] absolutely no connection with the case" and was

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[1] The Jones Act authorizes any seaman who suffers personal injury "in the course of his employment" to bring "an action for damages at law." 46 U.S.C. App. 688(a). Congress has provided that "all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply" in Jones Act suits. *Ibid.* Thus, the Jones Act "is based upon, and incorporates by reference" the Federal Employers' Liability Act (FELA), 45 U.S.C. 51 *et seq.* *Garrett* v. *Moore-McCormack Co.*, 317 U.S. 239, 244 (1942). Under the FELA, a plaintiff may sue in state or federal court (45 U.S.C. 56), and a state court action is not subject to removal to federal court. See 28 U.S.C. 1445(a); *In re Dutile*, 935 F.2d 61, 62 (5th Cir. 1991) (applying Section 1445(a) to Jones Act suit).

[2] The petition does not seek review of the state court's determination on the issue of personal jurisdiction. We therefore do not address that issue here.

an inconvenient forum. Pet. App. A4. The court acknowledged that these facts were irrelevant under state law, and that La. Code Civ. Proc. Ann. art. 123(C) (West Supp. 1992) expressly barred dismissal of respondent's claim on grounds of convenience.[3] Pet. App. A4. The court nevertheless held that the state law of *forum non conveniens* was preempted in maritime actions filed in state court, relying on the Fifth Circuit's analysis of this issue in *Exxon Corp.* v. *Chick Kam Choo*, 817 F.2d 307 (1987), rev'd on other grounds, 486 U.S. 140 (1988). Applying the federal maritime rule of *forum non conveniens*, the court dismissed the action. Pet. App. A4.

3. The Louisiana Court of Appeal for the Fourth District affirmed. Pet. App. A5-A9. The court of appeal concluded that "[i]n the face of clear pronouncements by the Federal judiciary that maritime cases filed in state court must be governed by the federal doctrine of *forum non conveniens*, we are compelled to apply that defense in the instant case." *Id.* at A8.[4]

4. The Supreme Court of Louisiana reversed. Pet. App. A10-A19. The court first determined that under Article 123(C) of the Louisiana Code of Civil Procedure, "the doctrine of forum non conveniens is specifically made unavailable in * * * Jones Act or maritime law case[s]"

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[3] Under La. Code Civ. Proc. Ann. art. 123(B) (West Supp. 1992), a state court is authorized to dismiss a suit "in which a claim or cause of action is predicated solely upon a federal statute and is based upon acts or omissions originating outside of this state, when it is shown that there exists a more appropriate forum outside of this state." Article 123(C), however, provides that "[t]he provisions of Paragraph B shall not apply to claims brought pursuant to 46 [U.S.C. App.] § 688 or federal maritime law."

[4] The court of appeal acknowledged (Pet. App. A7) that in *Markzannes* v. *Bermuda Star Line, Inc.*, 545 So. 2d 537 (La. 1989), cert. denied, 493 U.S. 1043 (1990), the Louisiana Supreme Court had applied Article 123(C) to an admiralty suit brought in state court. But the court of appeal agreed with the trial court that the per curiam decision in *Markzannes* was not binding. Pet. App. A8.

brought in Louisiana courts. Pet. App. A14. The court further determined that state law was not preempted. The court reasoned that States are free to provide remedies for maritime torts as long as the remedy does not contravene a "fundamental feature of admiralty law," and that the rule of *forum non conveniens* applied by federal courts did not represent one of those "fundamental feature[s]." *Id.* at A15.

The court relied primarily on the decision in *Southern R.R.* v. *Mayfield*, 340 U.S. 1, 3 (1950). *Mayfield* held that state courts are not required to apply the federal doctrine of *forum non conveniens* in cases arising under the Federal Employers' Liability Act (FELA), 45 U.S.C. 51 *et seq.*, even though liability under the FELA is governed by federal substantive law. Pet. App. A15-A16. The Louisiana Supreme Court concluded that the *Mayfield* analysis should also govern Jones Act claims in state courts because the Jones Act expressly incorporates the remedial provisions of the FELA. 46 U.S.C. App. 688. Further, the court found it significant that in diversity cases, the Fifth and Eleventh Circuits had treated the doctrine of *forum non conveniens* as "procedural" for purposes of determining choice-of-law under *Erie R.R.* v. *Tompkins*, 304 U.S. 64 (1938). See Pet. App. A16-A17 (discussing *In re Air Crash Disaster Near New Orleans*, 821 F.2d 1147, 1159 (5th Cir. 1987), vacated on other grounds, 490 U.S. 1032 (1989); *Sibaja* v. *Dow Chemical Co.*, 757 F.2d 1215, 1219 (11th Cir. 1985)). In that regard, the court added that the application of Article 123 (C) will "not be outcome determinative," because the substantive law to be applied in this case—the Jones Act and general federal maritime law—will be the same whether the case is adjudicated in Louisiana or Pennsylvania. Pet. App. A17-A18. Accordingly, the court held that "the doctrine of forum non conveniens is not a substantive feature of general maritime law" and that the state rule is not preempted. *Id.* at A19.

DISCUSSION

In our view, the Supreme Court of Louisiana correctly determined that the doctrine of *forum non conveniens* is not a characteristic feature of admiralty law that must be governed by a uniform federal rule. Under the "saving to suitors" clause of 28 U.S.C. 1333(1), a state court exercising jurisdiction over a maritime claim is authorized to "adopt such remedies, and to attach to them such incidents, as it sees fit, so long as it does not attempt to make changes in the 'substantive maritime law.'" *Madruga* v. *Superior Court*, 346 U.S. 556, 561 (1954). The State's policy decision to make the defense of *forum non conveniens* unavailable in maritime and Jones Act cases properly brought in its courts merely provides a remedy for a tort that is itself defined by substantive maritime law. That is a permissible choice under federal maritime preemption principles. See *Red Cross Line* v. *Atlantic Fruit Co.*, 264 U.S. 109, 124 (1924). That policy is supported, moreover, by Congress's determination that the States' venue determinations should prevail under the Jones Act (see *Bainbridge* v. *Merchants & Miners Transportation Co.*, 287 U.S. 278, 281 (1932)), and with this Court's determination that States are free to adopt or reject a *forum non conveniens* defense in cases brought under the FELA. See *Southern R.R.* v. *Mayfield*, 340 U.S. 1, 3-4 (1950).

We also do not believe that plenary review of the Louisiana Supreme Court's decision is necessary. The federal interest in maritime commerce is not impaired by the decision because the court reached the correct result on the facts presented. Further, we do not believe that the conflict between the decision of the Supreme Court of Louisiana and a line of contrary decisions of the Fifth Circuit needs to be resolved by this Court. For the reasons set forth below, the conflict has very limited practical significance, and the Fifth Circuit decisions have all arisen in the international context, where the admiralty defense of *forum non conveniens* has traditionally had its greatest force.

1. Article III extends the judicial power of the United States to "all cases of admiralty and maritime jurisdiction." U.S. Const. Art. III, § 2, Cl. 1. That grant of jurisdiction encompasses authority to develop federal common law—"to draw on the substantive law 'inherent in the admiralty and maritime jurisdiction' and to continue the development of this law within constitutional limits." *Romero* v. *International Terminal Operating Co.*, 358 U.S. 354, 360-361 (1959) (citations omitted); see *Knickerbocker Ice Co.* v. *Stewart*, 253 U.S. 149, 160 (1920) ("The Constitution itself adopted and established, as part of the laws of the United States, approved rules of the general maritime law."). Congress has nevertheless continued to preserve a substantial role for the States in the adjudication of maritime disputes.

a. In implementing its authority over admiralty cases, Congress gave district courts "original jurisdiction, exclusive of the courts of the States, of * * * [a]ny civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled." 28 U.S.C. 1333(1). Although that provision refers to the "exclusive" jurisdiction of the district courts, it is well settled that States retain broad authority to hear admiralty and maritime claims under the so-called "saving to suitors" clause.

This Court has interpreted the "savings to suitors" clause —which first appeared in the Judiciary Act of 1789, ch. 20, § 9, 1 Stat. 77[5]—to mean that "[a]dmiralty's jurisdiction is 'exclusive' only as to those maritime causes of action begun and carried on as proceedings *in rem*, that

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[5] As originally enacted, the clause provided for the exclusive jurisdiction of the district courts, "saving to suitors, in all cases, the right of a common law remedy, where the common law is competent to give it." 1 Stat. 77. Although the clause was amended to its present form in 1948 and 1949, "this change in no way narrowed the jurisdiction of the state courts under the original 1789 Act." *Madruga* v. *Superior Court*, 346 U.S. 556, 560 n.12 (1954); *Offshore Logistics, Inc.* v. *Tallentire*, 477 U.S. 207, 222-223 (1986) ("1948 and 1949 amendments effected no substantive change").

is, where a vessel or thing is itself treated as the offender and made the defendant by name or description in order to enforce a lien." *Madruga* v. *Superior Court*, 346 U.S. at 560.[6] Section 1333(1) accordingly "leave[s] state courts 'competent' to adjudicate maritime causes of action in proceedings *'in personam,'* that is, where the defendant is a person, not a ship or some other instrument of navigation." 346 U.S. at 560-561.

b. It is also well settled that when a state court has "concurrent jurisdiction" over a maritime claim under the "saving to suitors" clause, the State may "adopt such remedies, and * * * attach to them such incidents, as it sees fit, so long as it does not attempt to make changes in the 'substantive maritime law.'" *Madruga* v. *Superior Court*, 346 U.S. at 561. "Stated another way, the 'saving to suitors' clause allows state courts to entertain *in personam* maritime causes of action, but in such cases the extent to which state law may be used to remedy maritime injuries is constrained by a so-called 'reverse-*Erie*' doctrine which requires that the substantive remedies afforded by the States conform to governing federal maritime standards." *Offshore Logistics, Inc.* v. *Tallentire*, 477 U.S. 207, 222-223 (1986).

The so-called "reverse-*Erie*" doctrine is based upon general rules of admiralty preemption. As this Court has noted:

> Although the corpus of admiralty law is federal in the sense that it derives from the implications of Article III evolved by the courts, to claim that all enforced rights pertaining to matters maritime are rooted in federal law is a destructive oversimplification of the highly intricate interplay of the States and the National Government in their regulation of maritime commerce. It is true that state law must yield to the needs of a uniform federal maritime law when this Court finds inroads on a harmonious system. But this limitation still leaves the States a wide scope.

[6] The exclusion of *in rem* jurisdiction is attributable to the fact that the "saving to suitors" clause was originally phrased to cover only "common law" remedies, and "[a] proceeding *in rem*, as used in the admiralty court, is not a remedy afforded by the common law." *The Moses Taylor*, 71 U.S. (4 Wall.) 411, 431 (1867).

Romero, 358 U.S. at 373 (footnote omitted). Thus, state law may "modify or supplement" (*Just* v. *Chambers*, 312 U.S. 383, 388 (1941)) general maritime law, if the state rule does not "contravene[] the essential purpose expressed by an act of Congress or work[] material prejudice to the characteristic features of the general maritime law or interfere[] with the proper harmony and uniformity of that law in its international and interstate relations." *Southern Pacific Co.* v. *Jensen*, 244 U.S. 205, 216 (1917).[7]

This Court has emphasized that "it would be difficult, if not impossible, to define with exactness" when state law rules may be applied in maritime cases. *Jensen*, 244 U.S. at 216; see *Kossick* v. *United Fruit Co.*, 365 U.S. 731, 738 (1961); Baxter, *Choice of Law and the Federal System*, 16 Stan. L. Rev. 1, 34 (1963). And it has approved the choice of state law rules in many diverse contexts—allowing, for example, the maritime application of "[s]tate-

[7] In *Jensen*, a dockworker was killed while unloading cargo from a vessel engaged in interstate commerce. The state court had held that his survivors were entitled to relief under the New York Workers' Compensation Act. This Court, however, reversed, holding that a "necessary consequence" of applying the state law "would be destruction of the very uniformity in respect to maritime matters which the Constitution was designed to establish; and freedom of navigation between the States and with foreign countries would be seriously hampered and impeded." 244 U.S. at 217. For other instances in which this Court has found state law preempted by maritime law, see, *e.g.*, *Kossick* v. *United Fruit Co.*, 365 U.S. 731, 741-742 (1961) (diversity action; state statute of frauds cannot defeat maritime contract); *Garrett* v. *Moore-McCormack Co.*, 317 U.S. 239, 249 (1942) (action in state court; federal admiralty rule requiring tort defendant to show validity of release preempts state-law rule requiring tort plaintiff to prove invalidity of release); *Chelentis* v. *Luckenbach S.S. Co.*, 247 U.S. 372, 382-384 (1918) (action removed to federal court; admiralty law measure of recovery governs where common law measure is different).

created liens, * * * [s]tate remedies for wrongful death and state statutes providing for the survival of actions, * * * [s]tate rules for the partition and sale of ships, state laws governing the specific performance of arbitration agreements, [and] state laws regulating the effect of a breach of warranty under contracts of maritime insurance." *Romero*, 358 U.S. at 373 (footnotes omitted).

While the import of those decisions is that every state rule regulating maritime matters must be considered carefully on its facts, this Court in *Jensen* made clear that preemption must be evaluated in terms of the purposes underlying the constitutional grant of admiralty jurisdiction—to provide for "uniformity and consistency * * * on all subjects of a commercial character affecting the intercourse of the States with each other or with foreign states." 244 U.S. at 215 (quoting *The Lottawanna*, 88 U.S. (21 Wall.) 558, 575 (1875)).[8] And the process of decision, in practice, is "one of accommodation" between the need for uniformity and the State's interest in regulating the matter at hand. *Kossick*, 365 U.S. at 739. Thus, even where a state rule of decision may "conflict[] with a rule of maritime law," the Court has been willing to uphold a state law when the maritime rule "did not require uniformity." *Romero*, 358 U.S. at 373-374.

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[8] The Court in *Jensen* analogized the doctrine of admiralty preemption to the limitations on state power under the dormant Commerce Clause (244 U.S. at 216-217):

> A similar rule in respect to interstate commerce deduced from the grant to Congress of power to regulate it is now firmly established. "Where the subject is national in its character, and admits and requires uniformity of regulation, affecting alike all the States, such as transportation between the States, * * * Congress can alone act upon it and provide the needed regulations. * * * And the same character of reasoning which supports this rule, we think, makes imperative the stated limitation upon the power of the States to interpose where maritime matters are involved.

2. The Supreme Court of Louisiana's holding in this case—that the State may apply its own open-forum policy, rather than a federal doctrine of *forum non conveniens*—is consistent with this Court's cases interpreting the doctrine of *forum non conveniens* and the scope of admiralty preemption.

a. The doctrine of *forum non conveniens* is not a characteristic feature of admiralty that requires uniform application. It is, instead, a rule used by courts to allocate business in a fair and sensible manner among available judicial forums.

It is true that the doctrine has long been applied in admiralty cases, see, *e.g.*, *Canada Malting Co.* v. *Paterson Co.*, 285 U.S. 413 (1932); *Willendson* v. *Forsoket*, 29 F. Cas. 1283 (D. Pa. 1801) (No. 17,682), but it is not a special feature of admiralty. See *Canada Malting*, 285 U.S. at 423 ("[c]ourts of equity and of law [have] also occasionally decline[d], in the interest of justice, to exercise jurisdiction, where the suit is between aliens or nonresidents or where for kindred reasons the litigation can more appropriately be conducted in a foreign tribunal"). The doctrine generally applies to any case brought in federal court, including diversity cases governed by state law. See, *e.g.*, *Piper Aircraft Co.* v. *Reyno*, 454 U.S. 235 (1981); *Gulf Oil Corp.* v. *Gilbert*, 330 U.S. 501 (1947); *Koster* v. *Lumbermens Mutual Casualty Co.*, 330 U.S. 518 (1947).[9] And the doctrine has also been recognized as "part of the common law of many States." *Piper Aircraft*, 454 U.S. at 248 n.13. In fact, this Court has treated admiralty decisions defining the substance of

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[9] In *Gulf Oil Corp.* v. *Gilbert*, *supra*, which established the applicability of the doctrine of *forum non conveniens* in diversity cases, Justice Black dissented based in part on his view that the doctrine of *forum non conveniens* had been applied in martime cases "[f]or reasons peculiar to the special problems of admiralty." 330 U.S. at 513. The Court, however, found that the doctrine had been validly applied in a broad variety of cases in law and equity, and held that it could properly be applied in a district court sitting in diversity. *Id.* at 504-505, 507-512.

forum non conveniens analysis as binding precedent in the nonmaritime context. See *Piper Aircraft*, 454 U.S. at 247-249 (treating the admiralty case of *Canada Malting* as binding precedent in nonadmiralty diversity action).

This Court's precedents confirm that the doctrine operates as a discretionary rule of convenience—not as a substantive rule of maritime commerce that must be uniform. The principle of *forum non conveniens*, as generally applied, "is simply that a court may resist imposition upon its jurisdiction even when jurisdiction is authorized by the letter of a general venue statute." *Gulf Oil Corp.* v. *Gilbert*, 330 U.S. at 507. In implementing that doctrine, this Court has refused to "lay down a rigid rule to govern discretion." *Piper Aircraft*, 454 U.S. at 249. Rather, it has explained that "when an alternative forum has jurisdiction to hear [a] case, and when trial in the chosen forum would 'establish . . . oppressiveness and vexation to a defendant . . . out of all proportion to plaintiff's convenience,' or when the 'chosen forum [is] inappropriate because of considerations affecting the court's own administrative and legal problems,' the court may, in the exercise of its sound discretion, dismiss the case." *Id.* at 241 (quoting *Koster* v. *Lumbermens Mutual Casualty Co.*, 330 U.S. at 524).

b. In this case, Louisiana enacted a different rule of forum convenience: once personal jurisdiction and venue are established, state courts have no discretion to withhold a remedy in maritime cases. That policy intrudes only minimally on the federal interest in maritime uniformity. As this Court made clear in *Red Cross Line* v. *Atlantic Fruit Co.*, 264 U.S. at 124, where a state law deals "merely with the remedy in the state courts," without "modify[ing] the substantive maritime law" at issue, the doctrine of admiralty preemption does not require invalidation of the state law.[10]

[10] A different case would be presented if Louisiana barred enforcement of a forum selection clause agreed to by parties to a maritime contract. Martime contracts that are not of a strongly "local" nature are typically governed by uniform federal law (see *Kossick*, 365 U.S. at 735, 741), but in this case the parties apparently did not make forum selection a part of their commercial negotiations.

In *Red Cross*, the Court held that a New York court could award specific performance of an arbitration clause in a maritime contract even though that remedy was unavailable under admiralty law. As the Court later explained, "since such clauses are valid in admiralty and their breach gives rise to an action for damages, to compel arbitration is really to do no more than substitute a different and more effective remedy for that available in admiralty." *Kossick*, 365 U.S. at 740.

The same principle governs here. Article 123(C) does not enhance or diminish the substantive maritime rights or duties at issue. The general maritime law and the Jones Act will supply the rule of decision whether this case is brought in Louisiana or Pennsylvania. Pet. App. A17-A18.[11] Under these circumstances, the State's legitimate and substantial interest in adopting its own policies governing access to its courts should not be displaced. See, *e.g.*, *Southern R.R.* v. *Mayfield*, 340 U.S. at 3-4 (state law may accept or reject doctrine of *forum non conveniens* as a matter of state policy in FELA cases); *Bainbridge* v. *Merchants & Miners Transportation Co.*, 287 U.S. at 280 (Jones Act cases in state court are not governed by Jones Act venue provision; "we should be slow to impute to Congress an intention * * * to interfere with the statutory provisions of the various states fixing the venue of their own courts"); cf. *Stewart Organization, Inc.* v. *Ricoh Corp.*, 487 U.S. 22, 32 (1988) (holding that federal transfer-of-venue provisions set forth in 28 U.S.C. 1404(a) govern in diversity actions, and rejecting the

[11] The factors to be considered in determining the applicability of the Jones Act were set forth in this Court's decisions in *Lauritzen* v. *Larsen*, 345 U.S. 571, 583-592 (1953), and *Hellenic Lines Ltd.* v. *Rhoditis*, 398 U.S. 306, 308-309 (1970). Similar considerations apply to determine the applicability of general maritime law. See *Romero*, 358 U.S. at 381-382.

claim that state choice-of-forum policies must be applied under *Erie*).

Where the State merely provides a remedy for a tort under substantive maritime law, "the intrusion into federal interests [is] so minimal" (*Hess* v. *United States*, 361 U.S. 314, 334 n.13 (1960) (Harlan, J., dissenting)) that it is possible, without substantial risk to uniformity, to accommodate the State's interest in keeping its courts open to maritime claimants.[12] Indeed, because the doctrine of *forum non conveniens* presupposes that assertion of jurisdiction would comport with due process, there is little danger that an open forum policy will work material harm to the federal interests sought to be protected by a uniform system of maritime law.

The "strictures of the Due Process Clause forbid a state court to exercise personal jurisdiction * * * under circumstances that would offend 'traditional notions of fair play and substantial justice.'" *Asahi Metal Industry Co.* v. *Superior Court*, 480 U.S. 102, 113 (1987) (quoting *International Shoe Co.* v. *Washington*, 326 U.S. 310, 316 (1945)). That principle, in turn, requires a court to "consider the burden on the defendant, the interests of the forum State, and the plaintiff's interest in obtaining relief. [A court] must also weigh in its determination 'the interstate judicial system's interest in obtaining the most efficient resolution of controversies; and the shared interest of the several States in furthering fundamental substantive social policies.'" *Ibid.* (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 292 (1980)). Those considerations—which are analogous to factors considered under the doctrine of *forum non conveniens*—offer substantial assurance that a state court's

[12] In this case, the trial court held that petitioner's appointment of an agent for service of process in Louisiana was sufficient to establish personal jurisdiction. Pet. App. A3. Petitioner does not contest that determination. Accordingly, it must be assumed for present purposes that the State has a constitutionally sufficient interest in adjudicating this controversy against petitioner.

assertion of jurisdiction will not unreasonably burden an entity operating in maritime commerce.[13]

c. This analysis of general admiralty preemption principles derives further support from congressional enactments. This Court's interpretation of the Jones Act and the FELA indicates that Congress has not generally required States to apply a federal rule of forum selection for actions otherwise governed by a uniform body of federal substantive law.

(i) Section 688(a) of the Jones Act provides that venue is proper in "the district in which the defendant employer resides or in which his principal office is located." [14] *In Bainbridge* v. *Merchants & Miners Trans-*

[13] Indeed, where a claim does not arise out of, and is unrelated to, the defendant's activities in a State, jurisdiction over a defendant foreign corporation may be sustained only if the company has "continuous and systematic general business contacts" with the State. *Helicopteros Nacionales de Columbia* v. *Hall*, 466 U.S. 408, 415-416 (1984). It is thus unlikely that a shipping company's passing commercial contacts within a State will suffice to support personal jurisdiction over a claim unrelated to the State. See *id.* at 414-415 (describing the kind of "continuous and systematic" contacts necessary to sustain "general jurisdiction"). Further, when a lawsuit involves foreign defendants, the "unique burdens" of defending a lawsuit abroad have "significant weight" in evaluating due process concerns. *Asahi*, 480 U.S. at 114. And as this Court in *Asahi* emphasized:

> [t]he procedural and substantive interests of other nations in a state court's assertion of jurisdiction over an alien defendant will differ from case to case. In every case, however, those interests, as well as the Federal Government's interest in its foreign relations policies, will be best served by a careful inquiry into the reasonableness of the assertion of jurisdiction in the particular case, and an unwillingness to find the serious burdens on an alien defendant outweighed by minimal interests on the part of the plaintiff or the forum State.

480 U.S. at 115. Thus, the federal interest in international comity will be subject to scrutiny in state court, irrespective of the availability of a state-law *forum non conveniens* defense.

[14] Although Section 688(a) refers to "jurisdiction," this Court has explained that the provision governs venue rather than subject

portation Co., 287 U.S. at 280-281, the Court held that Section 688(a) does not govern venue in Jones Act suits *filed in state court*. Rather, "venue [in such actions] should * * * be[] determined by the trial court in accordance with the law of the state." *Id.* at 281.[15]

Although *Bainbridge* does not squarely address the question of *forum non conveniens*, it does indicate that Congress either regarded venue under the Jones Act as a matter of judicial housekeeping that would be federally prescribed only for the federal courts, or that the States' interest in regulating their own dockets outweighed any need for a uniform venue policy in state and federal courts. Further, the Court's interpretation of Section 688(a) was premised in part on the view that venue in state courts, even for federal maritime causes of action, is presumptively a matter of state law under our federal system. See *Bainbridge*, 287 U.S. at 281. If a federal rule of forum selection were essential to preserve the necessary uniformity of maritime law, Congress presumably would have required States to adhere to the venue rule adopted in Section 688 for federal courts. But it did not.

(ii) This Court's construction of the FELA in *Southern R.R.* v. *Mayfield*, *supra*, also supports the conclusion that maritime commerce does not require a uniform rule of forum selection. Under the FELA, state courts must apply uniform federal law in determining whether a railroad is liable to its employees. *Garrett* v. *Moore-McCormack Co.*, 317 U.S. 239, 244 (1942). The Court held in *Mayfield*, however, that state courts are not required to

matter jurisdiction. See *Pure Oil Co.* v. *Suarez*, 384 U.S. 202, 203 (1966).

[15] The plaintiff in *Bainbridge* filed suit in Philadelphia County, Pennsylvania, but his employer's principal office was in Baltimore, Maryland. 287 U.S. at 279. The state court dismissed the action on the ground that venue was improper under Section 688(a). This Court reversed that decision, noting that the federal rule did not bind the state court.

adhere to a uniform federal doctrine of *forum non conveniens* in FELA cases. 340 U.S. at 3-4.

We see no reason to conclude that the Court should depart from the interpretation of FELA preemption adopted in *Mayfield* because the Jones Act, which applies to employees' claims against maritime shippers, "is based upon, and incorporates by reference, the [FELA]," *Garrett*, 317 U.S. at 244. *Mayfield* establishes that Congress has not determined that the federal interest in uniform law governing the liability of rail employers also requires a uniform rule of forum selection. That congressional policy choice counsels strongly against preemption here as well.

3. We do not share petitioner's view that plenary review of the decision in this case is necessary. To be sure, there is a conflict between the decision below and a series of Fifth Circuit decisions holding that the doctrine of *forum non conveniens* is a feature of general maritime law that binds state as well as federal courts. See *Ikospentakis* v. *Thalassic S.S. Agency*, 915 F.2d 176, 180 (5th Cir. 1990); *Quintero* v. *Klaveness Ship Lines*, 914 F.2d 717, 725-726 (5th Cir. 1990); *Camejo* v. *Ocean Drilling & Exploration*, 838 F.2d 1374, 1382 (5th Cir. 1988); *Exxon Corp.* v. *Chick Kam Choo*, 817 F.2d 307 (5th Cir. 1987), rev'd on other grounds, 486 U.S. 140 (1988).[16] This conflict, however, has limited practical significance.

[16] In *Chick Kam Choo* v. *Exxon Corp.*, 486 U.S. 140 (1988), this Court adverted to, but did not resolve, the question presented in this case. The plaintiff filed suit in federal district court, but the district court dismissed several defendants on grounds of *forum non conveniens*. The plaintiff filed a second action in Texas state court, but the defendants enjoined that action in federal court. The Fifth Circuit affirmed on the ground that "[u]nder the federal uniformity doctrine state courts *must* apply the *forum non conveniens* rule of the general maritime law in any case brought before them by citizens of foreign lands over which the federal courts would have admiralty jurisdiction." *Exxon Corp.* v. *Chick Kam Choo*, 817 F.2d at 324. This Court reversed, holding that the federal action was barred by the Anti-Injunction Act, 28 U.S.C. 2283. Re-

Admiralty claims filed in federal court, or removed by defendants who have a right to litigate in federal court, will be governed by the federal doctrine of *forum non conveniens*. Maritime plaintiffs who wish to avoid the application of the federal rule can simply file their actions in state court. In light of the preemption analysis adopted by the Louisiana Supreme Court here, claimants who have a right to litigate their maritime claims in the Louisiana state courts will not be barred from doing so by the contrary views of the Fifth Circuit.

Plaintiffs entitled to choose to litigate in state court, *i.e.*, those who sue defendants who have no right to remove the action, are adversely affected by the Fifth Circuit's view of preemption only if they mistakenly file their action in federal court first. Under those circumstances, the Fifth Circuit has required dismissal with prejudice so that the claimant cannot refile the action in state court.[17]

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jecting the claim that the "relitigation exception" to Section 2283 applied, the Court reasoned that the preemption question had not been litigated in the first federal district court action and decilned to reach the merits of that question. 486 U.S. at 149-150.

Following the dissolution of the federal court's injunction, the Texas Court of Appeals held that Texas law had abolished the doctrine of *forum non conveniens* in cases involving a death or injury that occurred outside the State. *Chick Kam Choo* v. *Exxon Corp.*, 821 S.W.2d 190, 191 (Tex. Ct. App. 1991). On April 29, 1992, the Texas Supreme Court granted review, and the case is still pending in that court.

[17] For example, in *Ikospentakis*, the Fifth Circuit held that the district court had abused its discretion in granting a foreign plaintiff's motion to dismiss without prejudice a Jones Act suit against a Panamanian shipping company and a Greek citizen. The court of appeals held that dismissal without prejudice would allow the plaintiff to sue in the Louisiana courts, where the doctrine of *forum non conveniens* would be unavailable. 915 F.2d at 180. The court of appeals noted, moreover, that it viewed Louisiana's rule as "erroneous" and that "[a]t some point, Louisiana must bend to the federal courts' construction of federal law." *Ibid.* And in *Quintero*, the Fifth Circuit affirmed the district court's refusal to grant a voluntary dismissal without prejudice on like grounds. 914 F.2d at 725-726. Finally, the court of appeals in *Camejo* held that the dis-

Because dismissal with prejudice can readily be avoided by filing the action in state court as an initial matter, we do not believe this conflict is one which requires intervention by this Court at this time.

If the Court determines that review of the preemption issue presented here is important, we nevertheless believe that it would be preferable for the Court to address the issue in a case involving international maritime commerce. Unlike this case, each of the Fifth Circuit decisions cited above involved at least some foreign parties or interests.[18] The Fifth Circuit's determination in *Chick Kam Choo* that the doctrine of *forum non conveniens* preempts state law in maritime cases relied heavily on the international implications of asserting jurisdiction. 817 F.2d at 321-324.[19]

The doctrine of *forum non conveniens* was originally invoked by courts to dismiss claims involving foreign parties (see, *e.g.*, *The Belgenland*, 114 U.S. 355, 365-366

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trict court had properly declined to remand the case to the Texas state court, because the state court would not be free to rule differently on the issue of *forum non conveniens* decided by the federal court. 838 F.2d at 1382.

[18] See *Ikospentakis*, 915 F.2d at 177 (suit by Greek citizen against Panamanian corporation and other Greek citizen); *Quintero*, 914 F.2d at 719 (Philippine sailor injured while unloading a Liberian-registered, Norwegian-owned ship); *Camejo*, 838 F.2d at 1375 (Brazilian plaintiff injured in Brazil; one of defendants was Brazilian entity); *Chick Kam Choo*, 817 F.2d at 309 (Singapore national killed in Singapore).

[19] Indeed, the court of appeals in *Chick Kam Choo* went out of its way to make reference to the foreign residence of the plaintiff. See 817 F.2d at 324 ("Under the federal uniformity doctrine state courts *must* apply the *forum non conveniens* rule of the general maritime law in any case brought before them by citizens of foreign lands over which the federal courts would have admiralty jurisdiction."); *id.* at 320 (noting, in reference to its premption analysis, that "[w]hile Texas has an undeniably powerful interest in defining the jurisdiction of its courts, its interest in the substance of claims by non-resident aliens arising from activities in foreign lands cannot be considered strong").

(1885); *The Maggie Hammond*, 76 U.S. (9 Wall.) 435, 457 (1870). The claim of preemption may therefore have greater force where international interests are implicated.[20] This case accordingly does not implicate the full range of interests traditionally protected by the *forum non conveniens* doctrine in admiralty.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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[20] As recently as 1950, this Court observed that it had "never had occasion to apply [the doctrine of *forum non conveniens*] to a suit brought by a United States citizen" and that "[s]uch application has been rare even in the lower federal courts." *Swift & Co.* v. *Compania Caribe*, 339 U.S. 684, 697 (1950); see Bickel, *The Doctrine of Forum Non Conveniens as Applied in the Federal Courts in Matters of Admiralty*, 35 Cornell L.Q. 12, 41-47 (1949).

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